

THE HONORABLE THOMAS S. ZILLY

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

REX – REAL ESTATE EXCHANGE,  
INC.,

Plaintiff,

v.

ZILLOW, INC., et al.

Defendants.

Case No. 2:21-cv-00312-TSZ

**JOINT MOTION FOR RELIEF FROM  
DEADLINES**

NOTE ON MOTION CALENDAR:  
September 22, 2022

Plaintiff REX - Real Estate Exchange, Inc. (“REX”), Defendants Zillow Inc., Zillow Group, Inc., Zillow Homes, Inc., Zillow Listing Services, Inc., and Trulia, LLC (collectively, “Zillow”), and Defendant National Association of REALTORS® (“NAR”), by and through their attorneys, respectfully ask this Court to extend the remaining deadlines in this case.

The Parties originally submitted a discovery plan and proposed schedule June 1, 2021. Dkt. # 79. The Court issued the initial schedule on June 9, 2021. Dkt. # 81. Defendants each filed motions to dismiss. Dkt. ## 83, 84, 90, 92, 93. After the Court’s September 2, 2021 Order on the motions (Dkt. # 98), REX filed an Amended Complaint on September 30, 2021 that included new causes of action against each Defendant. Dkt. # 99. Zillow answered that Complaint on October 14, 2021. Dkt. # 100. NAR filed an additional motion to dismiss, which, after briefing, was granted in part and denied in part on December 20, 2021. *See* Dkt. ## 101, 102, 103, and 108.

During and after the pendency of the motions to dismiss, the Parties issued discovery requests, and each Party subsequently answered them. The Parties also worked cooperatively to resolve issues regarding an ESI Order and submitted that to this Court in January 2022. Dkt. # 112. In December 2021, REX also issued subpoenas to about 50 third parties, most of which are Multiple Listing Services. The parties have since issued additional discovery requests to one another, as well as third party subpoenas.

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2 Additionally, on January 27, 2022, NAR filed an Answer to REX's Amended  
3 Complaint that for the first time asserted a Lanham Act claim against REX. Dkt. # 114. REX  
4 filed a motion to dismiss that counterclaim on February 17, 2022. Dkt. # 115. NAR filed an  
5 opposition to REX's motion to dismiss on March 7, 2022. Dkt. # 117. REX filed its reply on  
6 March 11, 2022. Dkt. # 119. On April 22, 2022, this Court dismissed the counterclaim. Dkt.  
7 # 124.

8 On March 14, 2022, the Parties submitted competing proposals to revise the schedule,  
9 and on March 17, 2022 the Court issued a new schedule. Dkt. # 121. On August 12, 2022, the  
10 Parties filed a stipulated motion, asking the Court to extend deadlines for expert testimony but  
11 leaving all other deadlines in the case intact. Dkt. # 142. The Court granted the Parties'  
12 stipulated motion on August 15, 2022, formalizing that disclosure of expert testimony under  
13 Federal Rule of Civil Procedure 26(a)(2) is due by October 19, 2022, and rebuttal expert  
14 testimony under Rule 26(a)(2)(D)(ii) is due by December 2, 2022. *See* Paperless Order  
15 Granting Stipulated Motion Dkt. # 142 (Aug. 15, 2022).

16 Since then, the Parties have briefed several discovery motions and have been  
17 working on assorted discovery issues, including productions. Document productions  
18 remain in their early phases, as search term negotiations are ongoing but not yet complete.  
19 The Parties do not expect to complete search term negotiations with sufficient time for  
20 them to review, produce, and analyze all relevant documents before the October 19  
21 deadline for initial expert reports. Regarding data, productions are ongoing. The Parties  
22 do not expect data productions to be completed such that their respective experts will be  
23 able to analyze the important – and voluminous – information before initial reports are due  
24 on October 19. Thus, the current schedule does not leave sufficient time for experts to  
25 analyze this important and voluminous data before initial reports are due on October 19.

26 Accordingly, the Parties have met and conferred and jointly propose the following  
27 amended schedule for the Court's consideration, to give their experts time to analyze  
28 relevant data and documents, and to give the Parties and counsel time to pursue needed

discovery. The proposed schedule pushes most deadlines back about six weeks while largely keeping the interval between deadlines the same or similar to the interval in the current schedule. The Parties have extended somewhat the deadlines for rebuttal reports, summary judgment oppositions and replies, and Daubert oppositions and replies, instead of relying in the default sequencing in the federal rules.

	Current Schedule	Parties' Joint Proposal
Disclosure of expert testimony under FRCP 26(a)(2)	October 19, 2022	December 5, 2022
Disclosure of rebuttal expert testimony under FRCP 26(a)(2)(D)(ii)	December 2, 2022	January 18, 2023
Discovery Motions due by	November 17, 2022	January 6, 2023
Discovery completed by	December 27, 2022	February 3, 2023
Dispositive Motions due by	January 26, 2023	March 2, 2023
Daubert Motions due by	February 2, 2023	March 9, 2023
Oppositions to Dispositive Motions due by	<i>February 13, 2023*</i>	March 23, 2023
Oppositions to <i>Daubert</i> Motions due by	<i>February 13, 2023*</i>	March 30, 2023
Reply ISO Dispositive Motions due by	<i>February 17, 2023*</i>	April 21, 2023
Reply ISO <i>Daubert</i> Motions due by	<i>February 17, 2023*</i>	April 21, 2023
Motions in Limine due by	March 16, 2023	May 4, 2023
Pretrial Order due by	March 31, 2023	May 19, 2023
Trial Briefs to be submitted by	March 31, 2023	May 19, 2023
Proposed Voir Dire/Jury Instructions due by	March 31, 2023	May 19, 2023
Pretrial Conference	April 7, 2023 @ 10:00AM	May 26, 2023
Jury Trial	April 17, 2023 @ 9:00AM	June 5, 2023

\* Dates set by default under federal rules.

The Parties believe that the proposed schedule will provide the Parties' experts with time they need to analyze relevant data and documents, allow the Parties' counsel to conduct additional necessary discovery, and help the Parties prepare this matter for trial.

DATED: September 22, 2022

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**\*\*Pursuant to this Court’s Electronic Filing Procedure III L, the electronic signatory has obtained approval from all other signatories.**

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